

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 130 OF 2019**

Madan D. Kakule Petitioner
Versus
Shrikant Shankar Kerkar & 3 Others Respondents

Mr. Pranay A. Kamat, Advocate for the Petitioner.

Mr. Sagar G. Dhargalkar, Advocate for Respondent No. 3.

CORAM : C.V. BHADANG, J.

DATE : 1st October, 2019

ORAL ORDER:

The challenge in this Petition, at the instance of the petitioner/plaintiff, is to the order 12.10.2019 (below Exhibit D-37), passed by the learned Trial Court in Special Civil Suit No. 17/2012/C. By the impugned order, the learned Trial Court has allowed the application (Exhibit D-37), filed by the respondent no. 3 (original defendant no. 3), to drop him from the array of defendants. The learned Trial Court has placed reliance on Section 16 of the Electricity Act, in order to hold that no action would lie against the said Officer, when he is acting or purporting to act in his official capacity or the act purporting to be done in good faith.

2. I have heard Mr. Kamat, the learned Counsel for the petitioner and Mr. Dhargalkar, the learned Counsel for the respondent no. 3. Perused record.

3. According to Mr. Kamat, the learned Counsel for the petitioner, the suit was originally filed against the respondent nos. 1 and 2, making allegations of collusion and fraud in granting electricity connection to a structure, which is situated in the land belonging to the petitioner. Subsequently, the respondent nos. 3 and 4 (original defendant nos. 3 and 4) came to be added. The contention is that the respondent no. 3 could not have been deleted at the threshold, as the question whether, the act of the defendant no. 3 was in good faith or not, is a matter which can be gone into at the trial. For this purpose, reliance is placed on the decision of this Court in the case of **Boshan Developers Pvt. Ltd. & Others Vs. Comunidade of Bordem & Others 2016 (1) Mh.L.J. 874**. It is submitted that the impugned order is cryptic and does not refer to the various decisions, on which, reliance was placed on behalf of the petitioner.

4. Mr. Dhargalkar, the learned Counsel for the respondent no. 3 has supported the impugned order. It is

submitted that as at present, there are no allegations of fraud, collusion or want of good faith made against the respondent no. 3. Thus, there is nothing, which is required to be gone into at the trial.

5. I have considered the submissions made. I find that Mr. Dhargalkar, the learned Counsel for the respondent no. 3, is right in contending that at present, the plaint does not contain any allegation of fraud, collusion or want of good faith against the respondent no. 3, in releasing the electricity connection. Thus, there is nothing that needs to be gone into at the trial. In the case of **Boshan Developers Pvt. Ltd.** (supra), this Court in the context of Sections 121 and 129 of the Goa, Daman and Diu Town and Country Planning Act has held that the immunity from legal proceedings in respect of any act done in good faith would be a question of fact, in the context of the plaint allegations. Thus, what is significant is that the allegations made in the plaint and the question of the matter being gone into at the trial, can only arise in the context of specific allegations to that effect in the plaint, which are lacking in this case. In the result, no case for interference is made out. The Petition is dismissed, with no order as to costs.

6. At this stage, Mr. Kamat, the learned Counsel for the petitioner states that the petitioner may be granted liberty to take appropriate action, as may be available in law, against the respondent no. 3. Insofar as the said submission is concerned, this Court has not expressed any opinion as to the availability or merits of any such alternate remedy, which the petitioner may chose to avail, if so advised.

C. V. BHADANG, J.

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